



State of California  
**Commission on Judicial Performance**  
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Date: June 19, 2007

To: Persons and Organizations Interested in Rules Relating to Proceedings of the Commission on Judicial Performance

From: Commission on Judicial Performance  
Victoria B. Henley, Director-Chief Counsel

Subject: Invitation to Comment on Proposed Amendments to Rules of the Commission on Judicial Performance;

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In February 2007, the commission circulated proposed amendments and additions to its rules as part of its biennial rules review in accordance with Policy Declaration 3.5 of the Commission on Judicial Performance. The commission has approved circulation of a revised proposal for the amendment of rule 122(g) (expansion of depositions during formal proceedings). The commission also seeks comment concerning the proposed amendment to rule 118(c) (service of notice of formal proceedings) which was adopted on an interim basis by the commission at its October 25, 2005 meeting, pending completion of the comment and review period.

The proposed amendments with a brief explanation of the changes and a form for submission of comments can be found on the commission's Web site at [www.cjp.ca.gov](http://www.cjp.ca.gov) under Governing Provisions/Commission Rules. The deadline for comments is August 20, 2007.

Comments may be submitted by mail or facsimile to:

Commission on Judicial Performance  
Attn: Janice Brickley, Staff Counsel  
455 Golden Gate Avenue, Suite 14400  
San Francisco, CA 94102  
FAX: (415) 557-1266

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## **TEXT OF RULES SHOWING ADDITIONS AND AMENDMENTS**

### **[Interim] Rule 118. Notice of Formal Proceedings**

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(c) (Service of notice) After a notice of formal proceedings is signed by the chairperson of the commission, the chairperson's designee or other member designated by the commission, the notice shall be served by personal service of a copy thereof on the judge, unless the judge personally or through counsel waives personal service and consents to service by mail. If there is no consent to service by mail and it appears to the chairperson of the commission upon affidavit that, after reasonable effort for a period of 10 days, personal service could not be had, service may be made upon the judge by mailing, by prepaid certified mail, copies of the notice addressed to the judge at the judge's chambers and last known residence. In the event of service by certified mail, service is complete at the time of mailing.

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### **122. Discovery Procedures**

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(g) (Depositions) ~~After initiation of formal charges against the judge, the commission or the masters shall order the taking of the deposition of any person upon a showing by the side requesting the deposition that the proposed deponent is a material witness who is unable or cannot be compelled to attend the hearing. If a deposition is ordered, the procedures stated in Government Code section 68753 shall be followed.~~ the filing of the notice of formal proceedings, depositions shall be allowed as provided in this subdivision. The party The side requesting the deposition shall bear all costs of the deposition for service of process, reporter, transcripts and facility usage, and in the case of a videotaped deposition to perpetuate testimony under subpart (1), all direct costs incurred in videotaping the deposition.

(1) (Depositions to Perpetuate Testimony) The commission or the special masters shall order the taking of the deposition of any person upon a showing by the side requesting the deposition that the proposed deponent is a material witness who is unable or cannot be compelled to attend the hearing. If a deposition is ordered, the procedures stated in Government Code section 68753 shall be followed. Depositions to perpetuate testimony may be videotaped.

(2) (Discovery Depositions) In addition to depositions to perpetuate testimony provided for under subpart (1) of this subdivision, discovery depositions are permitted as provided in this subpart (2). Discovery depositions may not be videotaped.

a. The judge shall have the right to take depositions of up to four material witnesses, and the examiner shall have the right to take depositions of the judge and up to

three other material witnesses. Depositions of commission members or staff are not permitted. Bench officers, other than the respondent judge, and court staff shall be afforded counsel for the deposition, upon request, by the Administrative Office of the Courts.

b. If the examiner and judge stipulate in writing that a deposition may be taken as a matter of right under subpart (a), the commission shall issue a subpoena for such deposition. If the examiner and judge are unable to agree that a witness is material, or unable to agree concerning the manner, time and place of a deposition, the party seeking the deposition may file a request for deposition subpoena with the commission. Objections shall be filed within 5 days of filing the request. The commission may place restrictions or conditions on the manner, time and place of any deposition.

c. Each deposition upon oral examination is limited to one day of seven hours. Any objection during a deposition upon oral examination must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the commission, or to present a motion to the commission that the deposition is being conducted in bad faith or in such manner unreasonably to annoy, embarrass or oppress the deponent or party.

d. Depositions shall be completed 30 days prior to the hearing, unless a cut-off time otherwise is set by the commission or by stipulation of the examiner and the judge.

e. Any motion under this subpart (2) shall be presented to the commission. The commission may designate the chairperson or the chairperson's designee to perform all or any part of its duties under this subdivision. If special masters have been appointed pursuant to rule 121, subdivision (b), the chairperson may designate one or more of them to perform all or any part of the commission's duties under this subpart.

The provisions of subpart (2) of subsection (g) of rule 122 shall take effect January 1, 2008 and shall be operative until December 31, 2010, unless after review, they are reenacted by the commission.

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